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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Portland Division

LEGACY HEALTH; LEGACY GOOD
SAMARITAN HOSPITAL AND MEDICAL
CENTER; LEGACY MOUNT HOOD
MEDICAL CENTER; LEGACY MERIDIAN
PARK HOSPITAL dba LEGACY MERIDIAN
PARK MEDICAL CENTER; and LEGACY
EMANUEL HOSPITAL & HEALTH CENTER
dba LEGACY EMANUEL MEDICAL
CENTER,

Case No. 3:22-cv-00573-HZ

**PLAINTIFFS' SECOND NOTICE OF
SUPPLEMENTAL AUTHORITY IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

Plaintiffs,

v.

STATE OF OREGON; OREGON BUREAU
OF LABOR AND INDUSTRIES; VAL
HOYLE, in her official capacity as
Commissioner of the Oregon Bureau of Labor
and Industries; and DUKE SHEPARD, in his
official capacity as Deputy Commissioner of the
Oregon Bureau of Labor and Industries,

Defendants.

Plaintiffs submit this Second Notice of Supplemental Authority in support of their Opposition to Defendants' Motion to Dismiss.

Defendants seek dismissal of Plaintiffs' claims which include claims regarding NLRA preemption, conflict preemption, the invalidity of rulemaking, the Agency's exceeding relevant statutory authority, conflicting superseding requirements, critical health care emergencies, and Section 1983 claims alleging violations of the First Amendment, the excessive fines clause, and equal protection rights. Defendants rely upon the Younger Abstention doctrine and assert that Plaintiffs have the burden of showing that their claims cannot be litigated in the contested case proceedings. (Defendants' Motion to Dismiss, pp. 12-13.)

However, in the contested case proceedings, when the hospitals sought to compel discovery regarding various affirmative defenses including preemption, irregularities in rulemaking, First Amendment violations, and the proposed assessment of excessive fines, the BOLI Administrative Prosecutor opposed the hospitals' Motion to Compel Discovery, contending that the defenses raised by the hospitals were not relevant. In ruling upon the discovery issues, the BOLI Administrative Law Judge in a series of Interim Orders ruled that the focus of the hearing would be limited to whether the hospitals have committed the alleged violations of meal and break rules and that, as a consequence, the hospitals will not be allowed to compel discovery regarding many of their affirmative defenses.

Contrary to the Defendants' contentions in this matter, because BOLI's prosecutor has contended that the hospitals are prohibited from litigating their affirmative defenses at the contested case proceeding and because the Administrative Law Judge has agreed with the BOLI prosecutor that the hospitals are precluded from seeking discovery regarding their affirmative defenses, the hospitals do not have a "full and fair opportunity" to raise federal constitutional arguments in the state contested case proceedings, and thus the requirements for the application of the Younger Abstention doctrine have not been met.

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A copy of the Interim Order Denying Respondent's Second Motion to Compel and Denying Motion for Leave to File Discovery Motion After Discovery Motions Deadline dated November 30, 2022, in Case No. 59-20 is attached.

DATED this 22nd day of December, 2022.

BARRAN LIEBMAN LLP

By *s/Richard C. Hunt*

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of December 2022, I served the foregoing
**PLAINTIFFS' SECOND NOTICE OF SUPPLEMENTAL AUTHORITY IN OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS** on the following parties:

Brian Simmonds Marshall, Senior Assistant Attorney General
Alex C. Jones, Assistant Attorney General
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(Attorneys for Defendants)

by the following indicated method(s) set forth below:

- ☒ **Electronic Filing using the Court's ECF System**
- ☐ **Email**
- ☐ **Facsimile**
- ☐ **First-class mail, postage prepaid**
- ☐ **Hand-delivery**
- ☐ **Overnight courier, delivery prepaid**

s/Richard C. Hunt
Richard C. Hunt

CERTIFICATE OF SERVICE